

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

KRIS LINDAHL REAL ESTATE, LLC;
LINDAHL REALTY, LLC,

Plaintiffs,

v.

RE/MAX ESCARPMENT GOLFI REALTY
INC.,

Defendant.

Court File No.

**COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF**

JURY TRIAL DEMANDED

INTRODUCTION

Plaintiffs Kris Lindahl Real Estate, LLC and Lindahl Realty, LLC (together, “KLRE”) bring this complaint against RE/MAX Escarpment Golfi Realty, Inc. (“Golfi Realty”), for breach of contract and willful infringement of KLRE’s copyrights.

NATURE OF THE ACTION

1. KLRE is one of Minnesota’s top real estate brokerages. Built on the tireless efforts and ensuing successes of its CEO, Kris Lindahl, KLRE’s billboards and other advertisements are instantly recognized throughout Minnesota, Western Wisconsin, and even areas of Colorado. This is in no small part due to the substantial time and dollars invested in KLRE’s marketing and branding efforts. Indeed, today, no Minnesotan can drive through the Twin Cities without seeing a KLRE billboard or bus advertisement displaying Mr. Lindahl performing his signature “Arms Outstretched” pose. It goes without saying that this pose is an integral part of KLRE’s marketing campaign.

2. This case arises from Golfi Realty’s concerted, ongoing efforts to copy and palm off KLRE’s Arms Outstretched pose. After its broker, Rob Golfi, attended a seminar presented by

Mr. Lindahl, Golfi Realty created and published a series of advertisements substantially similar to the Arms Outstretched pose. One such advertisement was a video nearly identical to a highly creative and copyrighted “Campaign for Convenience” speech presented by Mr. Lindahl. Golfi Realty made these advertisements despite Mr. Golfi executing a written agreement prohibiting him and his representatives from using any of KLRE’s proprietary concepts, materials, and intellectual property presented at the seminar without authorization.

3. When confronted with its ongoing breaches and infringement of KLRE’s valuable intellectual property, Golfi Realty feigned confusion about whether Mr. Golfi did in fact sign the seminar agreement and whether he attended the seminar. Golfi Realty also backtracked on Mr. Golfi’s admission to Mr. Lindahl that it copied KLRE’s protected works and promised to stop doing so. Golfi Realty’s breaches and acts of infringement continue, causing irreparable and immeasurable harm to KLRE’s brand with each passing day. KLRE respectfully requests that the Court issue an order holding Golfi Realty to the terms of the seminar agreement, enjoining Golfi Realty from committing further breaches and acts of infringement, and awarding KLRE damages as compensation.

THE PARTIES

4. Kris Lindahl Real Estate, LLC is a Minnesota limited liability company with its principal place of business at 277 Coon Rapids Boulevard NW, Coon Rapids, MN 55433.

5. Lindahl Realty, LLC is a Minnesota limited liability company with its principal place of business at 277 Coon Rapids Boulevard NW, Coon Rapids, MN 55433.

6. On information and belief, Defendant Golfi Realty is a Canadian real estate agency with its principal place of business at 1 Markland Street, Hamilton, Ontario, Canada L8P 2J5.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) because this action is for, without limitation, copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.* This Court has supplemental jurisdiction over the state-law claim in this action under 28 U.S.C. § 1367(a) because the state-law claim is so related to the federal claim that it forms part of the same case or controversy and derives from a common nucleus of operative facts.

8. This Court has personal jurisdiction over Golfi Realty because (a) its broker, Rob Golfi, entered into a contract with a Minnesota limited liability company; (b) attended a seminar hosted by a Minnesota limited liability company; (c) the actions complained of in this action arise out of and relate to Golfi Realty's actions following Mr. Golfi's execution of this contract and attendance at the seminar; and (d) agreed that all disputes arising out of or relating to the contract will be resolved in Minnesota.

9. Venue is proper in this judicial district under 28 U.S.C. § 1391(c)(3) because Golfi Realty is not a resident of the United States.

FACTUAL BACKGROUND

I. KLRE's Founding and Innovative Marketing Campaign

10. Kris Lindahl is one of Minnesota's most well-known real estate professionals. Mr. Lindahl's reputation in the real estate industry skyrocketed during the early years of his career, leading to his recognition as Minnesota's top-ranked real estate agent in 2014. A few years later, in 2017, Mr. Lindahl's team became one of America's top real estate teams.

11. In 2018, Mr. Lindahl decided to hang his own shingle and opened the real estate brokerage Kris Lindahl Real Estate. KLRE has become the one-stop shop for buying and selling

homes in Minnesota, Wisconsin, and Colorado, earning countless awards and honors in the real estate brokerage industry.

12. KLRE's success is no accident. KLRE and Mr. Lindahl himself have devoted, and continue to devote, enormous time, energy, and capital in establishing and building the KLRE brand. This includes a carefully designed advertising campaign that includes billboards as well as countless radio, television, airline, public transportation, and other types of print advertisements. KLRE also maintains a strong and active presence on social media.

13. A common feature of KLRE's advertising is a pose wherein a person is shown from the chest up, smiling and looking straight ahead, with arms outstretched slightly above perpendicular with the torso and fingers splayed (the "Arms Outstretched Pose"). Mr. Lindahl is often the person in the advertisement, but other KLRE realtors or other individuals are sometimes in the advertisement instead. Representative examples of the Arms Outstretched Pose are below:



14. The Arms Outstretched Pose is used on billboards, public transportation, and countless other forms of online and offline advertisement. Representative examples are below:





15. KLRE’s use of the Arms Outstretched Pose in KLRE’s advertising campaign, combined with Mr. Lindahl’s leadership and innovative entrepreneurship, have helped cement KLRE as the premier independent brokerage in Minnesota and one of the fastest growing in the country.

16. The Kris Lindahl Pose is the subject of two pending United States trademark applications in Application Serial Nos. 90/772,610 and 97/469,697 (collectively, the “Arms Outstretched Marks”). Lindahl Realty, LLC owns all right, title, and interest in and to the Arms Outstretched Marks. The Arms Outstretched Marks were first used in commerce as early as July 2017.

17. Mr. Lindahl’s career success and innovative advertising strategies have helped him to become an influential speaker on the issues of real estate branding, marketing, and leadership. An educator at heart, Mr. Lindahl is a published author and accomplished podcaster. He also speaks at various conferences and seminars.

II. Mr. Golfi Attends a KLRE Seminar

18. On information and belief, Golfi Realty is a real estate brokerage principally operating out of Hamilton, Ontario, Canada. On information and belief, Golfi Realty is led by its broker, Rob Golfi.

19. In May 2021, KLRE presented a seminar titled the “Kris Lindahl Blueprint Seminar” (the “Seminar”). Before the Seminar, all attendees signed a written agreement agreeing to various terms concerning their attendance. In relevant part, all attendees agreed to the following provision:

Any unauthorized use or distribution of the proprietary concepts, materials, and intellectual property by the Participant or his/her representative is prohibited and the Seminar Hosts will pursue legal action if these terms are violated.

20. The Seminar Agreement provides that its terms will be governed by and construed under Minnesota law. Additionally, all Seminar attendees agreed that any dispute arising out of or relating to the terms of the Seminar Agreement will be resolved by nonbinding mediation in Minnesota or, if unsuccessful, binding arbitration in Minnesota.

21. On information and belief, on or about May 6, 2021, Mr. Golfi signed the agreement to attend the Seminar (the “Seminar Agreement”). The certificate documenting Mr. Golfi’s signature states that he viewed the Seminar Agreement at 6:15 p.m. PDT, signed it at 6:17 p.m. PDT, was asked to verify his identity at 6:17 p.m. PDT, and had his identity authenticated by email at 6:17 p.m. PDT. A true and correct copy of the Seminar Agreement signed by Mr. Golfi is attached as *Exhibit A*.

22. Additionally, the signature certificate provides an internet protocol (“IP”) address for the device used to view and sign the Seminar Agreement. On information and belief, this IP address corresponds to a physical address in Ontario, Canada.

23. On information and belief, Mr. Golfi attended the Seminar in May 2021. Consequently, Mr. Golfi viewed and became aware of the Arms Outstretched Pose during his viewing of the Seminar.

III. Golfi Realty Breaches the Seminar Agreement by Copying the Arms Outstretched Pose

24. After attending the Seminar, Golfi Realty began releasing advertisements copying the Arms Outstretched Pose. For example, on October 31, 2021, Golfi Realty posted the following advertisement on its Facebook community page depicting a Halloween-themed image of Mr. Golfi mimicking the Arms Outstretched Pose. The original post may be viewed at <https://www.facebook.com/robgolfi/photos/a.10154145116634058/10157690769749058/>.



25. As another example, on November 9, 2021, the following advertisement was posted on Mr. Golfi's Facebook page depicting Mr. Golfi and a Golfi Realty broker mimicking the Arms Outstretched Pose. The original Facebook post may be viewed at <https://www.facebook.com/photo/?fbid=10159805525569419&set=a.433023304418>.



26. As another example, on December 1, 2021, Golfi Realty announced a “Christmas with Local Businesses” test on its Facebook community page. The announcement depicts Mr. Golfi and an “Elf on the Shelf” plush toy mimicking the Arms Outstretched Pose. The original Facebook post may be viewed at

<https://www.facebook.com/robgolfi/photos/a.374369594057/10157750177729058/>.




27. Subsequent announcements in the Christmas with Local Businesses contest used the same picture of an Elf on the Shelf mimicking the Arms Outstretched Pose, but replaced the image on the computer monitor with information about the winning business. On information and


belief, Golfi Realty posted at least 21 such announcements on its Facebook community page in December 2021.

28. As another example, on January 9, 2021, Golfi Realty posted the following advertisement to its Facebook page portraying Mr. Golfi doing the Arms Outstretched pose. The original Facebook post may be viewed at

<https://www.facebook.com/robgolfi/photos/a.374369594057/10157814636904058/>.

 **The Rob Golfi Team REMAX**
January 9 · 🌐

Home prices have doubled in value every 10 years 📈 - <https://mailchi.mp/.../home-prices-have-doubled-in-value...>



Market prices 10 years later

MLS® Residential Market Activity – Average Sale Price (January 2012 - December 2021)

Region	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	% Change
Hamilton											
Ancaster	\$452,128	\$471,827	\$495,318	\$505,220	\$580,859	\$641,723	\$738,900	\$773,347	\$873,165	\$1,166,251	▲ 158%
Dundas	\$356,041	\$386,498	\$402,530	\$449,051	\$522,009	\$562,935	\$583,816	\$615,770	\$763,773	\$933,525	▲ 162%
Flemington	\$521,320	\$554,546	\$582,362	\$616,591	\$666,003	\$774,235	\$771,701	\$787,430	\$978,703	\$1,271,878	▲ 144%
Glanbrook	\$341,270	\$344,201	\$369,460	\$413,434	\$458,685	\$511,060	\$559,673	\$588,206	\$672,936	\$923,339	▲ 171%
Hamilton Centre	\$161,284	\$176,439	\$201,984	\$235,051	\$266,420	\$315,439	\$354,246	\$391,054	\$471,463	\$582,239	▲ 261%
Hamilton East	\$198,269	\$208,422	\$224,411	\$243,101	\$291,634	\$341,540	\$379,706	\$411,935	\$494,089	\$629,047	▲ 217%
Hamilton Mountain	\$263,485	\$282,206	\$302,482	\$333,896	\$377,633	\$427,343	\$472,465	\$501,432	\$583,390	\$756,034	▲ 187%
Hamilton West	\$292,963	\$316,236	\$338,840	\$367,362	\$371,049	\$403,872	\$488,793	\$503,943	\$566,419	\$668,223	▲ 128%
Stoney Creek	\$311,933	\$325,207	\$395,478	\$391,493	\$409,829	\$470,420	\$534,792	\$562,762	\$658,475	\$851,279	▲ 173%
Waterdown	\$456,217	\$442,350	\$464,244	\$506,860	\$506,946	\$586,983	\$619,258	\$702,472	\$767,917	\$989,662	▲ 144%
Halton											
Burlington	\$463,558	\$497,447	\$525,271	\$578,523	\$572,497	\$654,499	\$735,275	\$755,017	\$878,436	\$1,081,614	▲ 133%
Oakville	\$703,695	\$735,170	\$806,678	\$841,172	\$1,062,960	\$1,215,824	\$1,077,634	\$1,087,437	\$1,298,836	\$1,590,525	▲ 126%
Niagara											
Fonthill/Pelham	\$318,541	\$347,520	\$375,454	\$400,261	\$455,543	\$525,777	\$588,936	\$629,628	\$751,557	\$919,807	▲ 191%
Fort Erie	\$203,721	\$203,200	\$212,011	\$222,672	\$270,755	\$341,765	\$369,063	\$382,501	\$507,765	\$667,586	▲ 228%
Grenby	\$341,882	\$349,537	\$371,701	\$404,969	\$434,397	\$504,548	\$551,163	\$586,014	\$672,846	\$865,953	▲ 150%
Lincoln	\$300,643	\$304,322	\$327,657	\$366,038	\$411,665	\$484,031	\$511,382	\$625,115	\$654,260	\$841,068	▲ 180%
Niagara Falls	\$215,611	\$224,208	\$236,174	\$263,417	\$311,473	\$341,321	\$389,639	\$374,402	\$515,718	\$644,831	▲ 208%
Niagara-on-the-Lake	\$428,105	\$435,406	\$463,556	\$498,948	\$555,933	\$681,585	\$749,629	\$807,923	\$963,775	\$1,139,362	▲ 166%
Port Colborne/Wainfleet	\$296,066	\$197,441	\$213,601	\$220,326	\$262,326	\$306,682	\$370,730	\$391,297	\$506,276	\$651,020	▲ 216%
Stirlingville	\$259,477	\$260,780	\$298,156	\$340,732	\$395,496	\$472,638	\$488,529	\$520,744	\$586,861	\$783,058	▲ 202%
St. Catharines	\$218,587	\$224,893	\$234,305	\$254,332	\$292,960	\$348,789	\$387,574	\$428,634	\$496,095	\$642,288	▲ 192%
Thorold	\$207,369	\$222,873	\$226,807	\$239,981	\$291,345	\$359,630	\$378,716	\$434,811	\$501,762	\$652,067	▲ 214%
Welland	\$185,617	\$185,309	\$197,747	\$216,878	\$236,648	\$296,355	\$335,097	\$372,236	\$453,722	\$589,280	▲ 217%
OTA											
Toronto and surrounding areas	\$496,534	\$509,339	\$551,841	\$583,064	\$635,702	\$726,901	\$767,394	\$776,199	\$880,113	\$1,105,475	▲ 122%

Based on data provided from the Ontario Real Estate Association (OREA) for the period January 2012 to December 2021.

GOLFI TEAM **EXPERIENCE THE GOLFI DIFFERENCE!**
Visit RobGolfi.com or call 1-800-288-9184 today to find out how we can sell your home fast and for top dollar.

29. One of Golfi Realty’s most egregious copies of the Arms Outstretched Pose involved a KLRE video advertisement posted to Mr. Lindahl’s YouTube channel in May 2019. This advertisement was a play on a political campaign speech wherein Mr. Lindahl launched a “Campaign of Convenience” for his real estate clients (the “Lindahl Campaign Advertisement”). The video portrays Mr. Lindahl standing at a podium in front of United States flags with on-screen information resembling that seen on a cable news channel. Mr. Lindahl ends the video by performing the Arms Outstretched Pose. The Lindahl Campaign Advertisement video may be viewed at <https://youtu.be/TvmT4P1xoHE>.

30. In July 2022, KLRE obtained a valid federal copyright registration for the Lindahl Campaign Advertisement video under Registration No. PA 2-360-131. A true and correct copy of the registration certificate is attached hereto as ***Exhibit B***.

31. Golfi Realty created and published a video advertisement (the “Golfi Realty Campaign Advertisement”) that is nearly identical to the Lindahl Campaign Advertisement—it had a nearly identical script and used nearly identical graphics and gestures, including Mr. Golfi ending the video by performing the Arms Outstretched Pose. A comparison of this moment is below:



IV. Golfi Realty Continues its Breaches and Infringement After Demands to Cease and Desist

32. In February 2022, KLRE sent a cease-and-desist letter to Golfi Realty outlining Golfi Realty's various breaches of the Seminar Agreement and infringement on KLRE's

intellectual property rights. A true and correct copy of the cease-and-desist letter dated February 16, 2022, is attached as *Exhibit C*.

33. Through counsel, Golfi Realty responded by email on March 18, 2022. Golfi Realty stated that the Golfi Realty video had been removed but it was “unaware that a contract was signed and that a seminar was attended.” Golfi Realty asked for a copy of the signed contract and proof that Mr. Golfi attended the seminar.

34. Through counsel, KLRE provided a copy of the Seminar Agreement signed by Mr. Golfi and repeated its demand that Golfi Realty refrain from future infringement of KLRE’s intellectual property rights, including the Arms Outstretched Pose and the Arms Outstretched Marks. KLRE also repeated its demand that Golfi Realty cease its ongoing breaches of the Seminar Agreement.

35. The parties’ counsel continued to correspond through April and into May 2022. During that time, Golfi Realty’s attorney asserted that Mr. Golfi’s signature on the Seminar Agreement “does not appear authentic.” He also reiterated Golfi Realty’s position that the Golfi Realty campaign video would not be used in the future. He refused to commit that Golfi Realty would refrain from future breaches of the Seminar Agreement and infringement of KLRE’s intellectual property rights.

36. Two days after this email from Golfi Realty’s counsel, on May 11, 2022, Golfi Realty’s Facebook page posted the following advertisement showing Mr. Golfi performing the Arms Outstretched Pose. The original Facebook post may be viewed at <https://www.facebook.com/robgolfi/photos/pcb.10158017793159058/10158017793114058/>.



37. On information and belief, in addition to the previously described uses on social media, Golfi Realty has used the Arms Outstretched Pose in advertisements on billboards and public transportation. In fact, on May 27, 2022, a Twitter user published a tweet stating, “THERE ARE KRIS LINDAHL KNOCKOFF BILLBOARDS IN NIAGARA CANADA???” This tweet is available at

https://twitter.com/grrldetective/status/1530179573807140869?s=20&t=IgR_82dLGLxw8KxbNLK-Gg.

38. A week later, the same Twitter user published a tweet containing side-by-side pictures of a KLRE billboard and a Golfi Realty billboard. This tweet is available at

<https://twitter.com/grrldetective/status/1532858697352990720?s=20&t=hagF-1hfOzJFWlcmTmgoTQ>.



39. Another user responded to this tweet with a picture of a Golfi Realty advertisement on the side of a city bus, asking, “Is your guy on busses too?”



40. Golfi Realty did not seek KLRE's consent to use or copy the Arms Outstretched Pose. Nor has KLRE authorized Golfi Realty to use or copy the Arms Outstretched Pose. Golfi Realty knew or reasonably should have known that it did not have KLRE's approval to use the Arms Outstretched Pose.

41. After discovering Golfi Realty's ongoing breaches and infringement, on May 31, 2022, KLRE demanded mediation pursuant to the Seminar Agreement. A true and correct copy of the May 31, 2022 letter is attached as *Exhibit D*.

42. Golfi Realty has not responded to KLRE's May 31, 2022 letter.

COUNT I
Breach of Contract

43. KLRE incorporates by reference the allegations contained in paragraphs 1 through 42 as if fully set forth herein.

44. On or about May 6, 2021, Mr. Golfi executed the Seminar Agreement before attending the Seminar.

45. The Seminar Agreement is a valid and enforceable contract governed by Minnesota law.

46. The Seminar Agreement prohibited “[a]ny unauthorized use or distribution of the [Seminar host’s, including KLRE’s,] proprietary concepts, materials, and intellectual property by the Participant or his/her representative.”

47. The Arms Outstretched Marks are the proprietary intellectual property of Lindahl Realty, LLC and are the subject of Application Serial Nos. 90/772,610 and 97/469,697.

48. The Lindahl Campaign Advertisement is the proprietary intellectual property of Kris Lindahl Real Estate, LLC, registered with the United States Copyright Office as Registration No. PA 2-360-131.

49. The Arms Outstretched Pose is the proprietary intellectual property of Kris Lindahl Real Estate, LLC, protected by the common law of the state of Minnesota.

50. The Arms Outstretched Marks, Lindahl Campaign Advertisement, and Arms Outstretched Pose (together, “KLRE’s Intellectual Property”) are “intellectual property” within the meaning of the Seminar Agreement. Accordingly, under the Seminar Agreement, Golfi Realty had a contractual obligation not to “use or distribut[e]” KLRE’s Intellectual Property without authorization.

51. After attending the Seminar, Golfi Realty engaged in the unauthorized use, display, and distribution of advertisements containing the Arms Outstretched Pose and Arms Outstretched Marks, in violation of the Seminar Agreement. Additionally, after attending the Seminar, Golfi Realty created an unauthorized video advertisement that is substantially similar to the Lindahl Campaign Advertisement.

52. Golfi Realty's actions described above constitute material breaches of the Seminar Agreement.

53. As a result of Golfi Realty's breaches of the Seminar Agreement, KLRE has suffered damages in an amount to be determined at trial.

COUNT II
Copyright Infringement, 17 U.S.C. § 501

54. KLRE incorporates by reference the allegations contained in paragraphs 1 through 53 as if fully set forth herein.

55. KLRE is the sole owner of all right, title, and interest in and to the Lindahl Campaign Advertisement with the full and exclusive right to bring suit to enforce its copyright and to recover for infringement of the same.

56. Golfi Realty's unauthorized creation of the Golfi Realty Campaign Advertisement constitutes infringement of the Lindahl Campaign Advertisement.

57. Golfi Realty acted willfully in this regard, or at a minimum with willful blindness to, or in reckless disregard of, KLRE's rights to the Lindahl Campaign Advertisement.

58. As a result of Golfi Realty's unlawful acts, KLRE is entitled to recover its actual damages and Golfi Realty's profits attributable to the infringement.

59. KLRE is further entitled to injunctive relief restraining Golfi Realty and its officers, agents, employees, and all persons acting in concert with them, including Mr. Golfi, from engaging in any further such acts in violation of KLRE's copyright.

PRAYER FOR RELIEF

WHEREFORE, KLRE requests that the Court provide the following relief against Golfi Realty:

1. An entry of judgment holding that Golfi Realty breached the Seminar Agreement;
2. An award of damages for Golfi Realty's breach of the Seminar Agreement;
3. An order permanently and preliminarily enjoining and restraining Golfi Realty; its related companies and their parents, officers, agents, representatives, employees, contractors, successors, and assigns; and all others acting in active concert or participation with them, from:
 - a. infringing, directly or contributorily, any copyrights of KLRE in any manner, and from copying, exhibiting, transmitting, displaying, distributing, or preparing derivative works from any of the copyrighted material in any past, present, or future variation of the Work;
 - b. advertising, marketing, distributing, offering for sale, or selling any products bearing the Arms Outstretched Pose or depictions substantially similar to the Arms Outstretched Pose, or otherwise infringing KLRE's intellectual property;
 - c. assisting, aiding, or abetting any other person or business entity engaged in or performing any of the activities referred to in foregoing subsections;

4. Enter an order pursuant to 17 U.S.C. § 503 impounding all goods that infringe KLRE's copyright in the Lindahl Campaign Advertisement and any related items, including business records, that are in Golfi Realty's possession or under its control;

5. Enter an order requiring Golfi Realty to pay to KLRE such actual damages as it has sustained; and

6. Enter an order awarding KLRE such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, by counsel, respectfully request a jury trial for all issues deemed triable.

Dated: August 12, 2022

Respectfully submitted,

LATHROP GPM LLP

By: s/ Loren L. Hansen

Loren L. Hansen

Loren.Hansen@lathropgpm.com

Ashley M. Bennett Ewald

Ashley.BennettEwald@lathropgpm.com

Lee B. Bennin

Lee.Bennin@lathropgpm.com

80 South Eighth St.

500 IDS Center

Minneapolis, MN 55402

Telephone: 612.632.3000

Facsimile: 612.632.4444

Attorneys for Plaintiffs